

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

CLAYTON SMITH and §
JOHN SCHWERTZ, JR. §
PLAINTIFFS, §
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v. §
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TARRANT COUNTY COLLEGE DISTRICT §
And ERMA J. HADLEY, Interim Chancellor §
for Tarrant County College §
District, in her official capacity, §
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DEFENDANTS. §

**NOTICE WHY A TRIAL ON THE MERITS CANNOT
BE HAD ON NOVEMBER 16, 2009**

Pursuant to this Court's order of November 6, 2009, Defendants hereby file their Notice as to why a trial on the merits of Plaintiffs' claims should not be consolidated with the preliminary injunction hearing set for November 16, 2009 pursuant to FED. R. CIV. P. 65(a)(2) as follows:

1. Plaintiffs filed their Verified Complaint in this matter on November 3, 2009. On November 6, 2009, this Court issued a Temporary Restraining Order. Defendants have agreed to extend the terms of the Temporary Restraining Order until a trial on the merits. Thus, there is no injury or harm to the Plaintiffs in having a trial on the merits beyond the November 16, 2009 date.

2. The Plaintiffs have agreed to the terms of Paragraph 1.

3. While all parties agree that consolidation of the preliminary injunction with a trial on the merits would best conserve the resources of the Court, the Defendants aver that a trial on the merits on November 16, 2009 would irreparably harm the Defendants' case, prejudice the Defendants and violate the due process rights of the Defendants for the following reasons:

- a. Defendants have filed a Jury Demand in this case.
- b. Plaintiffs have submitted an affidavit of approximately 250 pages from David Broiles who has been listed as an expert in this case. Defendants have not

had adequate time to obtain an expert who can review the evidence and give an opinion.

- c. Plaintiffs have had an opportunity to obtain documents and other information from the Defendants through the Public Information Act. Defendants have not had a similar opportunity. Defendants would need at least sixty (60) days to draft, serve, obtain answers, review and possibly have a potential expert review responses. Defendants reasonably believe that documents necessary to the defense of this case are in the possession of Students for Concealed Carry on Campus, who are not parties to this action.
- d. A trial on November 16, 2009, on the merits would prevent the Defendants from presenting material evidence in this case.
- e. The Plaintiffs would suffer no harm as a result of not consolidating a trial on the merits with the hearing on November 16, 2009 because Defendants have agreed to extend the terms of the Temporary Restraining Order until such time as a trial on the merits could be held.
- f. Allowing some discovery time in this matter would provide an opportunity to develop the facts and the parties could possibly agree on certain undisputed facts.
- g. Defendants, using due diligence, cannot be prepared to present their case on November 16, 2009.
- h. A Motion for Continuance has been filed with this Court with the Agreement to Extend the terms of the Temporary Restraining Order.

TIME NEEDED TO PRESENT RESPECTIVE ARGUMENTS

- 4. Although the parties have agreed to a continuance of the preliminary-injunction and

consolidation of the trial on the merits for a date of not before January 2010, if the Court denies the relief sought in the Motion for Continuance and the preliminary-injunction hearing of November 16, 2009 is to go forward on that date, Defendants anticipate a day for both parties to present their respective arguments and evidence at a preliminary-injunction hearing.

Respectfully submitted,

LAW, SNAKARD & GAMBILL, P.C.

By: /s/ Angela H. Robinson

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of November, 2009, a true and correct copy of the above and foregoing instrument has been sent via electronic mailing and facsimile to the persons named below:

Karin Cagle
Kirkley & Berryman, LLP
100 N. Forest Park Blvd., Suite 220
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Lisa Graybill
Fleming Terrell
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P.O. Box 12905
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/s/ *Angela H. Robinson*

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